



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 5, 1998

Lt. C.E. Cox  
Administrative Services  
Bell County Sheriff's Office  
P.O. Box 749  
Belton, Texas 76513

OR98-0009

Dear Lieutenant Cox:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111812.

The Bell County Sheriff's Office (the "sheriff") received an open records request for a "mug" shot of a certain individual. You contend the requested photograph is excepted from required public disclosure pursuant to section 552.108 of the Government Code.<sup>1</sup>

Section 552.108 of the Government Code, as amended by the 75<sup>th</sup> Legislature, excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

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<sup>1</sup>This office has previously determined that the requested mug shot was excepted from required public disclosure pursuant to section 552.108 of the Government Code. See Open Records Letter No. 97-0448 (1997). Because of the recent amendment of section 552.108 by the Seventy-fifth Legislature, we do not consider Open Records Letter No. 97-0448 (1997) a "prior determination" for purposes of section 552.301 of the Government Code. We will therefore address whether the requested mug shot is now excepted from public disclosure under amended law.

(2) *it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or*

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state [and]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

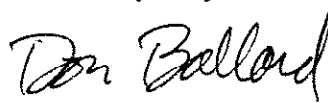
(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You have informed this office that the requested photograph pertains solely to an offense for which criminal charges have been dismissed. We therefore conclude that you have met your burden of establishing that the photograph relates to "an investigation that did not result in conviction or deferred adjudication." The sheriff therefore may withhold the requested photograph pursuant to section 552.108(a)(2) of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/RWP/ch

Ref.: ID# 111812

Enclosure: Photograph

cc: Mr. Thomas C. Retzlaff  
P.O. Box 1864  
Temple, Texas 76503-1864  
(w/o enclosure)